

**COUNTRY REPORT: THE PEOPLE'S REPUBLIC OF CHINA**  
**Public Interest Environmental Litigation and the Revised**  
**Environmental Protection Law of People's Republic of China**

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**Introduction: Public Interest Environmental Litigation**

Public interest environmental litigation normally refers to the fact that institutions and related organizations provided for by relevant law may file a suit against actions polluting the environment or disrupting the ecology that have already harmed the public interest, or have a significant risk of harming the public interest.<sup>1</sup> It may serve as an effective way for the public to participate in environmental protection, by putting pressure on environmental polluters and monitoring the enforcement of environmental law by administrative organs.

Public interest environmental litigation is relatively a new phenomenon in China where it has only started to develop in the past decade. In practice, Chinese courts have made some attempts regarding public interest environmental litigation through the setting up of environmental courts at the municipal level. However, there existed no clear reference to public interest environmental litigation at the legislation level until the revision of the *Environmental Protection Law of People's Republic of China* (EPL) in April 2014.

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<sup>1</sup> The Supreme People's Court Interpretation on Several Issues Regarding the Application of Law in Public Interest Environmental Civil Litigation (Draft for soliciting opinions), Article 1, available at: [http://www.court.gov.cn/gzhd/zqyj/201409/t20140930\\_198250.htm](http://www.court.gov.cn/gzhd/zqyj/201409/t20140930_198250.htm).

### The Environmental Protection Law (2014 revised version)

Although the *Civil Procedure Law* (2012 revised version)<sup>2</sup> includes a general reference to public interest environmental civil litigation, it does not provide workable procedural rules in detail and appears to be difficult to implement in practice. Article 55 of the Civil Procedure Law states that: ‘where the environment is polluted, the lawful rights and interests of the collective are infringed upon, or other acts impairing the public interest are committed, the organs stipulated by law and relevant organisations may bring actions to the people’s court.’ This brief statement is seen to be rather difficult to implement in practice, since it does not clearly rule on technical questions such as the range of the subject of litigation, conditions for initiating litigation, the scope of review and judgement, methods for bearing liability, burden of litigation costs, etc. The most controversial question appears to be which subjects are qualified to initiate public interest environmental litigation.

The revised EPL<sup>3</sup> was passed by the 8<sup>th</sup> Meeting of the 12<sup>th</sup> Standing Committee of the National People’s Congress on 24 April 2014, to enter into force on 1 January 2015. This is the first revision of the existing Environmental Protection Law which was originally issued on 26 December 1989. The revision has seen changes to the majority of the existing EPL to meet the current circumstances, 25 years after the promulgation of the existing EPL, and is claimed to be the strictest Chinese environmental protection law in history. Among all the changes, the revised EPL sets up a specific mechanism for public interest environmental litigation for the first time through legislation. Article 58 of the revised EPL reads that:

*‘For activities that cause environmental pollution, ecological damage and public interest harm, social organizations that meet the following conditions may file litigation to the people’s courts:*

- (1) Have their registration at the civil affair departments of people’s governments at or above municipal level with sub-districts in accordance with the law;*
- (2) Specialize in environmental protection public interest activities for five consecutive years or more, and have no law violation records.*

*Courts shall accept the litigations filed by social organizations that meet the above criteria. The social organizations that file the litigation shall not seek economic benefits from the litigation.’*

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<sup>2</sup> The Civil Procedure Law of People’s Republic of China 1991, as amended by the Standing Committee of the National People’s Congress respectively in 2007 and 2012. Available at: [http://www.npc.gov.cn/npc/xinwen/2012-09/01/content\\_1735841.htm](http://www.npc.gov.cn/npc/xinwen/2012-09/01/content_1735841.htm).

<sup>3</sup> Available at: [http://www.npc.gov.cn/npc/xinwen/2014-04/25/content\\_1861279.htm](http://www.npc.gov.cn/npc/xinwen/2014-04/25/content_1861279.htm).

Article 58 clarifies the subject range of public interest environmental litigation. It provides a legal channel for social organisations (and for citizens to participate through social organisations) which meet the abovementioned criteria to file litigation. It is estimated that a total number of 300 social organisations in China would be qualified to initiate public interest environmental litigation.<sup>4</sup> It should be clarified that since the EPL is the fundamental law in the area of environmental protection, its articles (including the provisions on public interest environmental litigation) are normally drafted in a general way which needs to be further specified by other legislation or judicial interpretation.

The scope of the subject of public interest environmental litigation has been widened in the four revision drafts considered by the Standing Committees of the National People's Congress respectively in August 2012, June and October 2013, and April 2014.<sup>5</sup> The previous three drafts were not able to be passed because of controversies over their content. The 1<sup>st</sup> consideration in August 2012 did not refer to public interest environmental litigation in any of its provisions. The 2<sup>nd</sup> consideration introduces the mechanism for public interest environmental litigation, but restricted the subject to All-China Environment Federation (a non-profit social organisation under the regulation of the Ministry of Environmental Protection) and Environment Federations in provinces, municipalities and autonomous regions. The 3<sup>rd</sup> consideration extended the scope of subject to nation-wide social organisations which are registered at the civil affairs department of the State Council, and have specialised in environmental protection public interest activities for five consecutive years or more, and have no law violation records. The 4<sup>th</sup> and final consideration further extended the scope to social organisations which have their registration at the civil affair departments of people's governments at, or above, municipal level with sub-districts.

In addition, the revised EPL clarifies the method for bearing liability which is also relevant for public interest environmental litigation. It reads that 'those who cause damages due to environmental pollution and ecological destruction shall bear tort liability in accordance with provisions of *Tort Liability Law of the People's Republic of China*'.<sup>6</sup> In addition, it stipulates that the validity period for prosecution with respect to compensation for environmental

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<sup>4</sup> Available at: [http://news.china.com.cn/2014-04/25/content\\_32200980.htm](http://news.china.com.cn/2014-04/25/content_32200980.htm).

<sup>5</sup> Ibid.

<sup>6</sup> Environmental Protection Law, *Supra* note 3, Article 64.

pollution damage shall be three years, counted from the time when the party becomes aware of, or should become aware of, the damage.<sup>7</sup>

### **Relevant Policy and Practice on Public Interest Environmental Litigation**

At the policy level, China is determined to tackle environmental pollution and take environmental protection forward in a way that conforms to the law. On 23 October 2014, the *Chinese Communist Party Central Committee Decision Concerning Several Major Issues In Comprehensively Advancing Governance According To Law* was published as a policy guide for the country. It decides to ‘use strict legal structures to protect the ecological environment, accelerate the establishment of ecological civil law structures to effectively restrain exploitative behaviour and stimulate green development, recycling development and low-carbon development, strengthen the legal liability of producers for environmental protection, and substantially raise the costs of violating the law’.<sup>8</sup> This serves as a policy direction for the development of environmental protection law and practice, including the area of public interest environmental litigation.

Public interest environmental litigation is treated as one of the focuses of the work of the people’s courts in practice. On 23 June 2014, the Supreme People’s Court published its *Opinion of the Supreme People’s Court on Comprehensively Strengthening Judicial Work Related to Environmental Resources to Provide Effective Judicial Safeguards to Promote the Construction of Ecological Civilisation* (SPC Opinion).<sup>9</sup> The SPC Opinion is divided into 7 sections which contain 26 provisions. It introduces the guiding ideology, basic principles, and mission goals for judicial work relating to natural resources, and serves as the guiding documentation for current and future work in environmental resources litigation. The SPC Opinion emphasises that public interest environmental litigation would serve the key point of strengthening environmental litigation, and includes a specific section (Section 4) entitled ‘greatly promoting public interest environmental litigation’. The SPC Opinion introduces methods to fully protect the rights of legally designated organs and social organisations to file public interest environmental litigation (Article 11). It explores ways to improve trial procedures in public interest environmental litigation (Article 13). It also endeavours to determine (according to law) methods for responsibility and the scope of compensation for

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<sup>7</sup> Environmental Protection Law, Supra note 3, Article 66.

<sup>8</sup> Available at: [http://news.xinhuanet.com/politics/2014-10/28/c\\_1113015330.htm](http://news.xinhuanet.com/politics/2014-10/28/c_1113015330.htm).

<sup>9</sup> Available at: <http://www.chinacourt.org/law/detail/2014/06/id/147914.shtml>.

public interest environmental lawsuits (Article 14). It then attempts to establish rational mechanisms for bearing litigation costs (Article 15).

In order to specifically deal with environmental litigation, the Supreme People's Court set up its Environmental Resources Tribunal in June 2014.<sup>10</sup> One of the focal points of the work of the Environmental Resources Tribunal is public interest environmental litigation, including launching trials of public interest environmental litigation at the provincial level and drafting relevant judicial interpretation.

By July 2014, people's courts in 16 provinces (municipalities and autonomous regions) have established a total number of 134 environmental protection tribunals, collegiate panels, and circuit courts to deal with environmental litigation.<sup>11</sup> The Environmental Resources Tribunal of the Supreme People's Court has selected 5 provinces (Jiangsu, Fujian, Yunnan, Hainan, Guizhou) as experimental units for public interest environmental litigation.<sup>12</sup>

The Environmental Resources Tribunal also bears the responsibility of publishing typical cases and drafting judicial interpretation on public interest environmental litigation. It published 9 typical environmental resources civil cases in July 2014. Although those cases are not legally binding for future judicial tribunals, they are likely to serve as direction and guidance for future environmental litigation. The 5<sup>th</sup> case issued was concerned with both public interest and private environmental litigation, and is an attempt to answer the question as to who would be eligible to file public interest environmental litigation. In this case, Zhu Zhengmao, an affected citizen and representative of other affected citizens, together with All-China Environment Federation, jointly sued Jiangyingang Container Ltd for environmental pollution. They were treated as suitable subject of litigation, and the case was accepted and heard by the Intermediate People's Court of Wuxi.<sup>13</sup>

In order to further clarify technical questions regarding public interest environmental litigation and facilitate its practice, the Environmental Resources Tribunal has drafted a judicial statement named *The Supreme People's Court Interpretation on Several Issues Regarding the Application of Law in Public Interest Environmental Civil Litigation* (Draft for soliciting opinions) (SPC Interpretation) in October 2014 and sought comments from the

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<sup>10</sup> Available at: <http://www.court.gov.cn/xwzx/xwfbh/twzb/20140703xwfbh/>.

<sup>11</sup> Ibid.

<sup>12</sup> Available at: <http://www.chinanews.com/fz/2014/11-13/6769020.shtml>.

<sup>13</sup> Available at: <http://www.court.gov.cn/xwzx/xwfbh/twzb/20140703xwfbh/>.

public. The SPC Interpretation answers in detail which social organisations would be eligible to initiate public interest environmental litigation;<sup>14</sup> rules on methods for bearing liability including preventative responsibility, restorative liability, compensatory liability, and punitive liability;<sup>15</sup> decides on the influence of public interest judgements on private litigation;<sup>16</sup> and provides judicial assistance to the plaintiffs in public interest environmental litigation.<sup>17</sup> Once passed and published, the SPC Interpretation would provide detailed rules on the application of the EPL, and serve as guidance for the courts at lower levels in terms of public interest environmental litigation.

## **Conclusion**

Public interest environmental litigation in China is still in its infancy. The number of existing cases is relatively small, the public's understanding of public interest environmental litigation is rather limited, and the operable procedural rules on such litigation have recently started to form at the legislative level. However, it is envisaged that both the law and practice regarding public interest environmental litigation will be further enhanced and developed.

The mechanism for public interest environmental litigation as stated in the revised EPL is the result of deliberate consideration by legislators, taking into account the opinions of the public, policy-makers and relevant scholars. The broadening of the subject of litigation enables more qualified social organisations to file public interest litigation. It thus serves as an effective way for the public to participate in environmental protection.

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<sup>14</sup> *Supra* note 1, Articles 2-5.

<sup>15</sup> *Ibid*, Articles 17-23.

<sup>16</sup> *Ibid*, Article 28.

<sup>17</sup> *Ibid*, Article 31.